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Representatives of the State vocational rehabilitation agencies and other public agencies in the field of health, welfare, and education for all the States in Region IX attended the conference. The pros and cons of joint programs (Federal-State and funds from any unit of State or local government) in vocational rehabilitation and the requirements to be met are discussed. Reports included are: (1) "Regional Review of Programs Involving Third Party Funds," by Phillip Schafer, (2) "Administrative and Fiscal Aspects of The Use of Third Party Funds in Joint Programs," by Emiley M. Lamborn, (3) "Legal Aspects of the Use of Third Party Public Funds in Joint Programs," by Joel Cohen, and (4) "Vocational Rehabilitation of Disabled Youth Through Cooperative Programs: The Texas School, DVR Joint Programs," by Doyle Best. The appendixes include two Vocational Rehabilitation Memorandums entitled "The Use of State Funds Derived from Public Sources for Matching Purposes," and "Cooperative Programs for the Rehabilitation of Disabled Youth of School Age." (PS)

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SAN FRANCISCO STATE COLLEGE

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JOINT PROGRAMS IN VOCATIONAL REHABILITATION

Edited by David Orzech

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INTRODUCTION TO PROCEEDINGS OF INSTITUTE ON JOINT PROGRAMS

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Cooperative agreements and working arrangements between State vocational rehabilitation agencies and other public agencies in the fields of health, labor, welfare, and education, are by no means new in the States in the Pacific Region. Written agreements covering mutual areas of concern have existed for many years. More recently, however, the relationships between vocational rehabilitation and cooperating programs have taken on new meanings.

Awareness has grown of the necessity of joining forces to bring rehabilitative services to the physically and mentally handicapped at an earlier age or at an earlier point in their treatment or institutionalization. This appreciation has spread rapidly in the last decade in the fields of mental health, mental retardation, special education, public assistance, workmen's compensation, and others.

At the same time, State vocational rehabilitation agencies (at least in Region IX) have fallen behind other agencies in their growth, primarily because of lack of State funds to match available Federal dollars. Concurrently, new Federal programs, with a much higher share of Federal financing, have come into the picture, compounding the problem of vocational rehabilitation in obtaining funds from State legislatures. In contrast to the slow down of expansion of vocational rehabilitation agencies, the newer training and work-related programs in manpower, welfare, health, anti-poverty, etc., have mushroomed.

Thus the State vocational rehabilitation agencies have been forced to seek additional means of financing their services. Of necessity, they have begun looking to cooperating public agencies for funds which could be spent on vocational rehabilitation (with Federal matching from the Vocational Rehabilitation Administration). Some of the agencies have been quite open in their seeking out of resources which could be established as directed toward rehabilitation and potentially matchable by Federal funds. Other State VR agencies have waited to be "found". In one State, the agency has almost literally been propelled into joint programs involving such "third party" public funds.

Obviously, there can be, and are, many benefits from this type of arrangement. One of the positive values is that it brings the agencies together in a common effort. On the negative side, it may make the VR agency dependent on the cooperating program financially. In any event, many problems present themselves in the negotiations in working out the complicated administrative, fiscal and program relationships that are necessary.

It was to discuss the pros and cons of such pooling of efforts and the requirements to be met that the idea of a Regional Institute for all the States in Region IX was conceived. The institute was planned to give the participants a better idea of the kinds of pooled programs that were possible and of the conditions which must be met to qualify the programs under Federal and State laws and regulations. The impetus given in this Institute has already contributed greatly to the development of new programs throughout the Pacific Region. The benefits accruing from these programs should result in improving and extending services to more of our handicapped population.

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I

REGIONAL REVIEW OF PROGRAMS INVOLVING THIRD PARTY FUNDS

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I would like to preface my remarks by saying that my talk is primarily directed at the State people, but I want to be sure to recognize that there are a number of other people here from some of the third party programs. I hope what I am about to say will be helpful not only to you State agency people but also to those of you from the private or voluntary agencies or other public agencies.

In using the title Third Party Funds, I should give an alternate title: Necessity is the Mother of Invention. Because of the desperate plight that we are in, in terms of adequacy of funds, many of us, many of you in the State, and other states outside of this region, have searched for and tried to find other ways of financing a program. Last night as I was sitting at my desk trying to think of what I was going to say, what pearls of wisdom I was going to give you this morning, I couldn't help but be reminded that it was the anniversary of the President's death last year. I was chairing a meeting at the time of the assassination. I became so choked that I could do no more than adjourn the meeting and ask a priest to come up and bless the Country and the President. But it did remind me that the President, this shining man, had set a goal, so far out in front of us which we, who are concerned with the disabled, need to follow and think about. He had a concern for the disadvantaged - he wrote a whole new blueprint for the future of all disadvantaged people - but what he dreamed and what President Johnson is carrying out, was such a new, bright approach, that it is going to take us all many years to catch up with the concepts that were incorporated in his blueprint.

I think of the dream of Appalachia. The whole concept of economic opportunity, in which we are doing something so different than anything in our previous concepts. Instead of trying to continue to peck at the specific individual problems of the people, he dreamed up a whole change in our environmental system - changes in our structure, changes in our environment, changes in our educational system, changes in approaches to all of these things that we are only beginning to grasp the implications and significance of it.

Let me mention some of the things because I think they are significant to all of us here. He designed the concept of One Door. In other words, we, who have been talking about each going our own way, now see the possibility of putting together, in one place, all of the tools that are needed to attack the problem of disability and dependency in the nation. The concept bypasses the whole bureaucratic structure. Now somehow or other we in our approach have to think how to make this work. It is not going to be easy. He conceived of the problem as not being jurisdictional in terms of the lines of the city, or county, but he saw the problem of megalopolis and broader communities than has been thought of by most of us. And finally, he brought in the concept of the use of the disabled themselves. We, in our meetings today and in the next couple of days, hope to take a real significant step forward in terms of serving the disabled.

Each of you, I think, know the extent of the unmet need in your state. You know the consequences of the underfinancing we have been suffering over this last decade. In the late forties, most of the programs for the needy made great expansion. Most moved forward but somehow or other the rehabilitation programs missed that explosion or expansion. We did expand, true; we continue to expand. Each year, however, we have been continuing to fall farther and farther behind, particularly in the West with our population explosion and our fantastic other needs of roads and schools and sewers. It seems to me that we have had a smaller and smaller slice of the pie. We somehow or other got ourselves stuck on a plateau.

True, each year we get an 8% increase in funds that has represented a progression, a forward movement. Certainly we have increased our skills. But we have had to take a harder look at the priorities and a real reduction in the availability of our services. The absolute numbers have increased but unfortunately almost all of the states in this region fall far behind for many reasons. At the moment there is about $7.3 million of unmatched federal money in this region alone. This represents literally thousands and thousands of cases of people who are staying at home, are not being cared for, are burdens to themselves and burdens on the public or private funds. I think the saddest words of tongue or pen are these: "It might have been". Had we had this money during these periods, we might have moved far faster and have been somewhat nearer at this time meeting the problem of need. I find it hard to think that I need to say this, but our disabled with whom we are concerned are the prime persons in the poverty situation. Certainly disability is equated with poverty and deprivation, and I am sure I need not elaborate on this. If we fail to meet the need and reverse this course, it ultimately results in more and more depression of the individual, more and more depression of society.

So we again must say we hope at this meeting to take a real leap forward. At a recent meeting I made the remark that we can hardly take this leap unless we can find a source of funds, unless some way, some device, is arrived at, by which we can multiply ourselves many more times than we are today. If we can't do this, I think we are doomed to set on dead center, and this is why I have such enthusiasm for our program of the next couple of days.

I was sitting in on the California Advisory Council last week, last Saturday I guess it was, and I was so thrilled, as were all of the members of the Advisory Council, by the proposals that were made by Mr. Marrin, Mr. Thompson and Mr. Walker in a whole new area. There was literally a tremendous breath of fresh air put into the program and I heard many of the Advisory Council members talking about how wonderful this was, to see the future exploding and expanding ahead of them.

I don't propose to give any definition of what Third Party funds are or what we are talking about because both in the letter you already have and in some of the other material which you will receive, the whole Third Party fund idea is very well described. The question really is what are public funds. All this is, is really a way of looking to others to help us by using funds which are credited to, or under the control of, the state agency, or transferred, or appropriated, and spent under the state law. Where might we look for some of these funds? Certainly they can come from welfare and from the schools. Many of the states already have programs going on with the school systems, the mental hospitals, alcoholic rehabilitation, prisons, public hospitals, crippled children programs, and I am sure there are others you can dream up.

But as part of my talk, I want to lay down some cautions. Not cautions that should inhibit us, but guidelines that should keep us on a very narrow and hazardous path. Third Party funds can be exceedingly dangerous. They can control the direction of the program to categories which are not representative of the major fields of needs. They can direct funds or upset a balanced program. All of these, I think, each of you can elaborate on and see the areas where danger signals can appear. They can absorb maximum funds which result in an unbalanced program. For example, the fact that we have at the present time $7.3 million could result in the complete absorption of these available but unused federal funds by the special education problem of the states alone. We have to be exceedingly cautious in seeing how we maintain a reasonable balance between these.

Two other very serious problems seem to be present in this. One is that we can get ourselves caught in what I would call conflicts. Conflicts with agencies or jurisdictional fights and these we have to guard against. The other is that we can develop opposition from those kinds of groups which are conceivably opposed to the use of federal funds. This may in many ways jeopardize the program.

But I would like to say this. Our cause is great, our need is great, and I think this is the time for a calculated risk, I think it is time for moving forward. The alternatives are continuation of inadequate services or even the development of competing programs throughout the country. Remember the poem, I forget the exact title but it goes, "but how could men die better than facing fearful odds". Well, if we are going to have trouble, lets have trouble in this way, lets have trouble in exploding our program into whole new concepts and areas. What it should result in, it seems to me, is each agency contributing instead of wasting its resources in parallel, competing rehabilitation programs.

If the rehabilitation concept is valid, and I think all of us agree it is, it does cut across all of the agencies, I think we have a real concept to contribute to the other agencies, something to bring to them. One thing that is happening now or is going to happen is that instead of continuing our rather monolithic agency which proceeds along the lines of seeing what job is spelled out for us in the law, we are moving into, what I would call an administrative relationship with other agencies. To my way of thinking this kind of program, program budgeting, a horizontal or lateral kind of administration, is going to require the most mature and sophisticated administration that any of us have ever encountered.

I am aware that we do not have the answers. Many of you have been exploring and experimenting and moving into relationships with other agencies with funds appropriated seemingly for other purposes but working, focusing, on the direction in which rehabilitation should go. I am convinced that if we are flexible and mature, we can come to the point where each agency can contribute its skills, its funds, its ability, and profit from the contributions of all. But this is going to require an administration of the highest order. It is truly a leadership role that I see the vocational rehabilitation agencies taking after long years. It is something I've dreamed of and begged for. I do not want to give you the impression that I think this is going to be easy. It will not be easy to handle these complex relationships, nor will it be easy to interpret this to the community, or to your legislature, or to your boards of supervisors, or to whatever agency you work with, because this is a very hard thing to explain and work out. It is very complicated to do in the first place and also requires extreme caution, but at the same time, it has the potential that we must reach for.

I say the question really resolves itself to "Can we play in a symphony or does each of us toot his own horn"?

II

ADMINISTRATIVE AND FISCAL ASPECTS OF THE USE OF THIRD PARTY PUBLIC FUNDS IN JOINT PROGRAMS

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One of my favorite authors, Edmund Wilson, discusses in one of his articles some of the assumptions which we take so much for granted that we never express them at all. One of the assumptions in our civilization which he identifies is that there is a sequence of events in times past. Even our language reflects it. It doesn't reflect it as clearly as Latin does with its clarity and precision, but our language lets us relate things in the past in the order of their occurrence.

There is no special language for Third Party Funds. There is no magic to Third Party Funds. There are, however, some underlying assumptions which I think should be voiced in order for us to understand what is involved.

One of the assumptions is that the use of Third Party Funds involves considerable innovation in government since it means having agencies working together in new patterns of administration which don't fit into normal bureaucratic programming and operations. This admittedly involves difficulties. Another one of the underlying assumptions is that the legal and fiscal aspects of Third Party Funds constitute only part of their use - one side of the coin. You have to turn over the coin and see that the obverse is basically a matter of program planning and development, in the broadest sense of the words - program planning and development which take into consideration what are the ultimate aims and objectives.

All of this must be done within the framework of the Vocational Rehabilitation Act which has really a very broad charter of services and gives considerable flexibility as to how a State develops its program. The Act forms the basis and the framework for the planning that is necessary in developing programs with other agencies.

The first section of the Act explains its purposes. Section 2 deals with the methods by which funds are distributed to the States for vocational rehabilitation services and their administration. Section 3 contains the formula for distributing funds to States for the extension and improvement of vocational rehabilitation services. Section 4 is the basis for the research and training grant programs. Section 5 describes the conditions under which a joint Federal-State program functions.

There are one or two provisions in Section 5 that are particularly important for our discussion. The first is that the State designates what is the agency in the State which is responsible for administering the vocational rehabilitation program. Another is the provision that the State plan shall be in effect in all political subdivisions of the State.

Sections 6, 7, 8, 9 and 10 have of course specific purposes but they are not pertinent here. Section 11, however, is very important because this section defines vocational rehabilitation services. This definition applies to the whole grants to States program whether financed under Section 2 or under Section 3. There is no difference between Sections 2 and 3 in this regard and the definition is fundamental to each of them. Under either section of the Act you can finance the vocational rehabilitation services defined in Section 11.

Vocational rehabilitation services include guidance, training and placement, and the various services that are conditioned on need and that are provided to individuals. "Vocational rehabilitation services" also include activities which enhance rehabilitation resources: the establishment of rehabilitation facilities and workshops and certain items related to the controlled business enterprises program. Section 11 actually provides a very broad base on which to develop a program for services to individuals.

The first principle of matching, whether a State is using state appropriations, or other public funds or contributions, is that the money be spent for vocational rehabilitation services which are defined in Section 11 of the Act and their administration. There is a second principle which is equally important - that under Sections 2 and 3 of the Act the expenditure must be made under the approved State Plan.

There is a great deal of flexibility as to how a State organizes and runs its program. There are, however, certain bench marks that have to be observed, two of which were noted in connection with the provisions of Section 5 of the Vocational Rehabilitation Act:

> It is the designated State vocational rehabilitation agency which is responsible for the administration of the vocational rehabilitation program.
>
> The vocational rehabilitation program must be State-wide in nature.

There are some activities which at first glance appear to be exceptions to the principle of "Statewideness". For example, an extension and improvement project financed under Section 3 may operate in only one area of the State, because this section is designed for pilot projects. There are sometimes, too, different ways of organizing the delivery of service and still having services available throughout the State. It is very basic, however, that the State must provide comparable services to everyone no matter where they may reside.

Another provision of the State plan which is important is that in the vocational rehabilitation program State laws, regulations, and fiscal procedures, rather than Federal laws and regulations, govern the methods used by the State in expending funds. State laws, rules and regulations therefore are important to know about and consider a planning. For example, sometimes a State's laws set up certain funds or accounts; and these accounts must be used in operating a program in the State. Such accounts have little to do with program objectives nor do they have anything to do with the settlement of the Federal and State account which is based on the Federal share of the total expenditures. Such details must be explored on a State basis because they involve the methods and procedures which must be observed in a particular State for the program to work.

At the same time there are only details and the main thing to consider is the program you're trying to develop.

The third principle of matching is that the expenditures must be made under the control of the State vocational rehabilitation agency. Grants are made to the State for the vocational rehabilitation program. There is a designated State agency which has final responsibility for expenditures for the vocational rehabilitation program.

What does final responsibility mean? It means the final determination in the State that the expenditure is necessary, that it is what needs to be done, is made by the designated State agency. The State agency exercises its judgment as to just what it wants to do.

Another point is the distinction that exists between expenditures which are made for vocational rehabilitation purposes and those which are made for some other general purpose such as the educational program of the State of its health program. This will be discussed more fully later on the program, so I will only mention it now and say it is important.

These are the principles of matching under Section 2 and Section 3 of the Vocational Rehabilitation Act. There are only a few that one has to observe and they are basic. Even more important is what you do with them. As Mr. Schafer said earlier, sometimes necessity is the mother of adventure - invention I mean. (I think both are applicable.) At any rate, taking the necessity and the invention and the adventure all together the important thing is to keep what you are trying to do foremost in your thoughts. The States that have worked in the area of "third party financing" have found that what is really most rewarding is that they are able to extend services in terms of numbers of people served and far more important, they are able to develop a different kind and quality of service - something that would not exist if there were not two or more agencies trying to pool their resources to develop a continuum of services needed in the rehabilitation of the disabled.

I want to speak for a moment or two about the origin of public funds. The bulk of funds in the program comes from State appropriations made specifically for the use of the vocational rehabilitation agency or from allotments from general departmental appropriations. I think this should always be the major source of State funds because it represents a consideration by the State legislature of what should be the scope of the program - its quality and quantity. However, there are other sources of public funds which are recognized in the Vocational Rehabilitation Regulations. One is the actual transfer of money from one State agency to another. Then there are "Funds otherwise made available to the State or local rehabilitation agency by any unit of State or local government."

What do we mean by "Otherwise made available"? A transfer is a relatively simple fiscal procedure but it is not possible in some States to transfer funds from one appropriation to another. There are, however, other ways of making funds available to the State vocational rehabilitation agency. One of them is the setting up of a joint account, or some sort of special fund and having vouchers countersigned by a responsible official in the agency providing the funds and by an appropriate vocational rehabilitation official. Another is the use of an agreement which is supported by a budget and which is approved by both agencies.

Actually, the mechanics are not nearly so important as the fact that the money being made available is in the possession of an agency other than the State vocational rehabilitation agency. Consequently it is necessary to be particularly careful that the funds meet the tests of being State funds for vocational rehabilitation.

There are several of these tests. The first one is that the funds must be used for vocational rehabilitation program purposes - for vocational rehabilitation services or their administration. Another test is that there must be an actual expenditure by the State. The State has to pay someone for something. A third test is that the expenditure has to be made on behalf of a referral or client of the State vocational rehabilitation agency (with the exception of expenditures related to establishing rehabilitation facilities and workshops or to the State agency controlled business enterprises program). Another test is that the expenditure must be related to the mission of the vocational rehabilitation agency, and not represent something an individual is entitled to just because he is a resident of the State.

As I indicated before, the expenditure must be made under the control and at the discretion of the State vocational rehabilitation agency. What does this mean when the vocational rehabilitation agency itself is not disbursing the funds? It means the agency has to be cognizant of the expenditure, it has to be aware of it to the extent that it thinks the expenditure is necessary. It has to have, as I indicated before, the final authority for determining its necessity and its propriety.

The responsibilities of the State vocational rehabilitation agency in this regard stem from a couple of factors. It is the State designated vocational rehabilitation agency which is ultimately responsible for the expenditure of funds for vocational rehabilitation. It is the State vocational rehabilitation agency that claims Federal reimbursement for expenditures. That agency is also responsible for the quality and kinds of services that disabled people are getting with the funds for which it is responsible. So these are the reasons why the State vocational rehabilitation agency exercises responsibility.

There's a need for having a great deal of patience in trying to work out programs with "third party financing". I realize I have sounded almost as if I were talking about a monolithic State vocational rehabilitation agency. That isn't what I really mean. I'm emphasizing controls and tests because these reflect the bench marks in the Vocational Rehabilitation Act. Actually they give you a jumping off place from which to develop programs with other agencies and they do not impinge on the authority of other agencies. This, I think, is one of the key points to bear in mind.

The time is too short for me to cover fully some of the minor sources of "third party financing" but I will mention a couple of them. There are all kinds of sources of funds that can relate to the vocational rehabilitation program in such a way that you can work out a joint program. One of the traditional ones is Workmen's Compensation. Most of you have had experience with this. We have specific recommendations in this area but this source does not normally constitute a great proportion of State funds so I will not dwell on it. There are all kinds of other sources such as retirement payments and other fringe benefits.

I think, however, that when we are talking about planning ahead we want to keep our focus on what people need. At the moment there seem to be two very interesting avenues ready for exploration - avenues which really have meaning in terms of services to disabled people. One involves joint programs with special education in the States. I'm not going to go into this further because it will be taken up later on the program. I do want to talk about another area which is very much to the forefront today and which has great promise. This is joint arrangements with health and mental health authorities on trying to improve programs for people served by these agencies.

One of the papers which will be distributed to you later this afternoon is a good illustration of what can be done in this area. It is a copy of a program which was worked out in another State. It describes a facility for the mentally retarded. It makes excellent use of a situation which is common to many States.

No matter how much any of us think and are planning to get services for the mentally ill and for the mentally retarded into communities, State institutions for the mentally retarded or for the mentally ill are probably going to be here for a long time to come. So you can work with them now at the same time that you plan to work into communities and explore other facets of program planning.

What has been done in this example is to establish within an institutional setting a distinct program which is a rehabilitation program. It has its own organizational identity; it has its own physical identity; it has a marshalling of services which makes it possible to provide the kinds of services which are needed for the rehabilitation of the people in that institution.

Some people have the idea that a rehabilitation facility is a bricks-and-mortar proposition that you start from scratch. The authority for establishing facilities is much broader than that. Yes, you can construct a new building under the Hill-Burton Act and you can expand, remodel or alter an existing building under the Vocational Rehabilitation Act. But you can also use almost any suitable kind of building in developing a program which is comprehensive in nature and which has in it appropriate medical, psychological, social, and vocational components. You can build a whole new way of serving people which reaps very rich results. The evaluation which is received in a good facility is a comprehensive evaluation. The program planning which goes on to meet the needs of a disabled individual does all that we like to think of as program planning for that individual.

The results speak for themselves. For example, Mr. Dill Beckman, Director, South Carolina Vocational Rehabilitation Department, told me that in the facility which the South Carolina Vocational Rehabilitation Department is operating in the State mental hospital in collaboration with the mental health people they have found that the rate of return of people to the hospital has dropped to something like 13 percent for those who have been served in the facility and that those who do go back to the hospital are there for a shorter treatment stay than has ever been known before. They are also finding that those who are prepared for employment through this rehabilitation program are really able to make a satisfactory adjustment.

All of these things I am mentioning only to give you a sweep of what it really means to try to build programs with "third party financing". The mechanics depend on what is reasonable in a particular State. In other States where there are other kinds of organizational arrangements it is necessary to explore other ways, always keeping in mind, of course, the basic criteria in the Vocational Rehabilitation Act.

Another item which will be distributed to you are some guidelines which have been used in a number of regions for developing projects for establishing and operating facilities. They can easily be adapted to other joint programs, perhaps to the kind of program that Mr. Best will talk about this afternoon. You will see when you look at these guidelines that in working on these projects you block out your total need - what it is you need to do, how you want to go about doing it, how you're going to finance it, and how you are going to build the new facility program in an integral part of the program of both agencies.

Mr. Chouinard said this morning that you would like some comments on the "Laird Amendment" which was included in our 1965 Appropriation Act. As you know, under the Vocational Rehabilitation Act up until this point we have been able to match contributions only when they were given to the State vocational rehabilitation agency for use at its complete discretion. There were no exceptions to the rule. There were certain kinds of earmarking which were considered acceptable for earmarking public funds, but the kind of earmarking which said that the money was to go for a particular facility in such and such a city was not acceptable. The new amendment does allow this and makes the authority retroactive. The authority is effective for this fiscal year and for the future. It is a permanent amendment.

I brought copies with me of the draft regulations which have been forwarded for promulgation. They have not yet been signed but they are well on their way.

By the way, everything I said before I started talking about the "Laird Amendment" related to funds from public sources. What I am talking about now is "contributed funds" which means the funds coming from private sources. The new regulations recognize the same kind of earmarkings we have had in the past, that is, if somebody gives money for services to a particular group of persons, such as migrant laborers, that would be acceptable. It's not acceptable, of course, for someone to give money for serving John Smith because that would represent nothing but a reduction in the cost of services.

The new part of the regulations permits a private organization to give money to the State agency to be used in establishing a facility which the donor is going to run. The money has to be turned over to the State; it has to be deposited to its account. But the State can put that money plus Federal grant money or State money from some other source into expenditures for establishing a facility.

This is a new source of funds that's opened up; it is not new authority in the sense of a new vocational rehabilitation service. It relates to the same authority we have always had for establishing facilities and workshops.

I think, however, that when the source of the money and the ultimate use of the money are one and the same, it behooves us to think quite carefully how to use best the new combination. If you think of this as simply letting Federal money flow on through, I think you are doing a disservice to the program of rehabilitating the disabled. This new source of money truly opens up a wonderful resource and it should be used in that light. This makes it possible to have in many, many, many local communities the facilities that have long been needed to rehabilitate the disabled. But the money should be placed where it will really do that and not just do fringy things because somebody happens to have some loose change around.

This means that you want to take a long hard look at what are the needs in your State for facilities. Sometimes the greatest need is to enlarge an existing facility and sometimes the organization of a new one; either is possible. But try to make whatever you do a part of your total program planning for getting what you need to serve more people and to serve them better.

There are many ways you can do this. One of them would be to use a group of advisers on the kinds of facilities that are needed in your State - some sort of ad hoc committee or a permanent one; it depends a little on how it would best fit into your structure. Another would be to have on your staff a real specialist in facility needs, both the identification of the needs and the need for cultivating relations with facilities so that they are used effectively in the rehabilitation of people.

In those States which have gone heavily into the establishment of facilities there has been very wonderful program developments. For example, 10 years ago there were only 2,500 people sent to rehabilitation facilities by State vocational rehabilitation agencies. Last year the number was over 38,000 and a large proportion was in States that had wisely spent money for establishing facilities and for trying to make good utilization of their services and for seeing that the facilities really contribute to programs purposes.

I think these funds, both public and private, can be used wisely. They can be used so that you can have an entirely different kind of program of services to people from what has been in many places a traditional and rather limited one. The people who have tried this way have found it to be more than worthwhile. It has proved to be miraculous. I hope we will have time tomorrow to discuss some of the specifics of the arrangements that each of you is interested in developing.

III

LEGAL ASPECTS OF THE USE OF THIRD PARTY PUBLIC FUNDS IN JOINT PROGRAMS

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The item we're here to talk about today has been developing over the years, at least since the 1954 Amendments and maybe before that. But in the past 2, 3 or 4 years there's been a lot of emphasis on extending what I've heard called here, the monolithic pattern of vocational rehabilitation, and on getting into new ways of doing things and extending the outreach of the program so that a lot of individuals who haven't been reached adequately could get services. Particularly, the emphasis has been on the mentally retarded and the mentally ill, and on new relationships, what Mr. Schafer called the sophisticated administrative relationships with schools and hospitals and institutions. I'll be emphasizing education here and using it as an example. But many of these things would also be applicable to mental institutions and hospitals.

Initially, we were asked whether it was within the statutory authority for the vocational rehabilitation program to get into these activities and of course we said sure, the better your relationships the better you can do the job. But then it was pointed out that you have to start somewhere and it's usually in a specific locality, and perhaps the State agency's appropriation for the vocational rehabilitation program isn't sufficient to cover this activity, and therefore it's necessary to use the funds furnished by the other agencies. Let's assume the funds came from the education agency and this is where the difficulty begins to come in, because the natural reaction is the money must have been appropriated to the education agency to carry out an education program, and vocational rehabilitation is not set up to match the State education program. As specific situations came up, and as we were pressed, we were asked whether there weren't some situations where funds of other agencies could be tapped, because there is a program activity that is urgently needed that's very important for accomplishing the purposes of the vocational rehabilitation program.

So we've been struggling with this for a couple of years now and we really don't have the answers yet. I would emphasize that there are possibilities. However, great care is needed to be sure that we are still standing within the realm of vocational rehabilitation. And this really is my entire theme here. It's very simple although the details get rather complex. It's one of the assumptions that Mrs. Lamborn mentioned, but it's as much of an answer as we have so far, namely, that the Federal-State vocational rehabilitation program is a categorical program and that the Federal funds are available only for participation in the costs of vocational rehabilitation activities.

You all know what a Federal-State program is. It's either administered or supervised by a State agency. The State decides what the scope of the program will be. The program is then described in a plan which must meet certain Federal requirements, and if the State plan and its operation do meet these requirements, the Federal Government pays a share of the cost, and the State must furnish its share.

That's the basic underlying scheme, but the point I would emphasize is that the program is categorical. Congress picks out certain types of activities which it is supporting and promoting. The Federal share under the program is available only in the types of activities and under the conditions which are described in the Federal statutes. There's been a lot of talk recently in Washington and elsewhere about block grants, where perhaps the Federal Government would give a certain amount of money each year to the States to use at their own discretion. But that is not the program we have now. Our program is to match vocational rehabilitation activities, not education and not health or anything else.

This is where the complexity begins, because of the nature of vocational rehabilitation, which, as you know consists of a great variety of interrelated services that enable an individual who has a physical or mental handicap to employment to be able to engage in employment. The totality of these services, from the point of view of the vocational rehabilitation program as a whole or as applied to a single client, constitutes a distinctive program which is distinguishable from other programs. Yet if these services are viewed individually they are similar to services furnished under other public programs, such as education, health, mental health, crippled children's services, or even public assistance. Where the activity for which claim is being made under the vocational rehabilitation program also falls within the area of another program, there's first the question of what should be the division of function between the two programs.

For instance vocational rehabilitation services include training, and this can cover high school education. Yet under the general educational pattern in this country, free public education is provided through high school for children who achieve normal progression. Accordingly, the position has been taken in a specific case that high school education for blind students who were proceeding through high school in normal progression could not be claimed under the vocational rehabilitation program. In this case, the funds were actually being furnished or could have been furnished from the vocational rehabilitation appropriation. At some point then there is a limit to the scope of the vocational rehabilitation program.

In the area of our discussion today, we're dealing with situations that are not nearly so easy. We're dealing with cases where the services, at least in the way they're organized and presented, go beyond what was previously done even by vocational rehabilitation or education or special education. There is a cooperative relationship between the various programs, and it's pretty difficult sometimes to separate the strands. What we've done is try to isolate a few factors in this relationship. There aren't any hard and fast rules and each case varies. You have to look at the situation in its totality, the combination of these factors and the factual situation that is presented. So with more caution than certainty I'll run through a few of these factors and I should say that all this assumes that the other requirements of the vocational rehabilitation program are met.

Mrs. Lamborn mentioned the importance of the sole State agency, and the type of control that it must have over the program, and the fact that the State must make claim only for the vocational rehabilitation services furnished to vocational rehabilitation clients. The State Agency must be making all the program decisions, and must have the requisite control over any personnel for whom claim is made. Most of these items are discussed in the Administrative Service Series No. 64-7 which was distributed. It goes into quite a bit of detail and I won't try to repeat that here.

Our discussion today goes a bit beyond what is in the Administrative Service Series memorandum. There have been instances where its contents have been used as a series of mechanical tests, where care has been taken to see that the vocational rehabilitation program does have a say in appointing this or that person or could object if he were to be fired, and so forth. But in some of these cases, sight has been lost of our essential theme here, namely that the activity must be vocational rehabilitation.

Another item that Mrs. Lamborn mentioned was statewideness. Again I am assuming that factor is taken care of in the specific instance, that whatever activity we are talking about is part of the statewide plan of operation, that, even if it is perhaps the first step, the activity looks towards a statewide furnishing of services to the particular group, bearing in mind as Mrs. Lamborn pointed out that there can be variations in the method of presenting services.

Let's look now at some additional factors. The first factor is the source of the funds. If the legislature appropriates funds for the vocational rehabilitation program, it's obviously making an allocation of funds which it views as being available for vocational rehabilitation. The State vocational rehabilitation agency, in all likelihood is going to be administering the funds and will have control over them. Here, the source of funds suggests that the activity carried on through those funds is a vocational rehabilitation activity. The other side of the coin is that if the funds are appropriated to the State education agency or come from local education funds, the presumption here is that the activities carried on through these funds are education activities and not vocational rehabilitation. Now I'm saying this is a presumption, which at least in legal terms is something that can be overcome. But the point is that we are dealing with a fairly artificial situation where we're trying to say that funds that were initially for another program suddenly have become the State's funds for the vocational rehabilitation program which earn Federal Matching.

The second factor is the normal scope of the other program. I've already mentioned the example about high school, that if the students are teen-agers going through high school in normal progression, that's plain education. In other situations, the national pattern is less clear cut, and the scope of the education program in the particular locality becomes significant. If a particular locality for instance has a comprehensive program of special education for handicapped children and some of the activities previously carried on under the special education program are claimed for matching under the vocational rehabilitation program, this would seem to be a questionable attempt to have the Vocational Rehabilitation problem take over existing responsibilities of another program. On the other hand if the special education program in a particular locality is rudimentary and a new activity is being undertaken, there'd be far more basis for considering that the new activity is being undertaken as part of the Vocational Rehabilitation program. Many of the cooperative projects undertaken by the vocational rehabilitation agency and another agency involve new activities which are related to the programs of the two agencies but fall between the previously existing programs. Nevertheless even in this case if the education program was deficient and the project constitutes an extension of its previous activities there would be a question where the new activities are distinctively those of the education program. For instance, classroom teaching of academic subjects is so inherent and distinctive a feature of education and special education, that in a cooperative project between a vocational rehabilitation agency and an education agency there is some difficulty in considering such activity to be part of the vocational rehabilitation program even though such classes were not previously provided under the education program.

The third factor is the opposite of the second, namely, distinctiveness of the activity as vocational rehabilitation. If the project activities have a distinctively vocational rehabilitation flavor, that is certainly a plus element for acceptability. For instance an education agency might make funds for clerical personnel, equipment, or facilities available to the vocational rehabilitation agency, which in turn staffs the school with vocational rehabilitation counselors and related personnel who test the children, determine their vocational aptitudes, consult with school staff concerning the children and their courses, arrange for restorative health care, contact potential employers, follow-up concerning on-the-job training, coordinate relationships of the client and the employer and the teacher, etc. Some if not most of these things might conceivably be done as part of an ideal special education program. Where, however, they have not been done, these services - particularly the furnishing of the combination of services in an interrelated manner - would have a distinctively vocational rehabilitation flavor and would seem acceptable under the vocational rehabilitation program.

In this connection, there has been some confusion over the limits of the cooperative projects. Where there is a school-class program under the education agency and the "traditional" type of vocational rehabilitation program, there might be what could be called a cooperative project between the two whereby the education staff would still teach the classes and vocational rehabilitation would furnish expanded services but the two agencies would work together. This isn't the kind of project we're talking about for Federal matching of third party funds, because the school part would clearly still be education, and none of it would be claimed for matching under the Federal-State vocational rehabilitation program. When we speak about funds from the education agency that can be matched under the Federal-State vocational rehabilitation programs, we're talking about the funds, the personnel, the equipment and facilities that have actually been made available for the vocational rehabilitation side of the project.

The fourth factor is the site, the location of the activity. If the activity is carried on at a vocational rehabilitation center or in a Vocational Rehabilitation office, it's more likely to be a vocational rehabilitation activity. If it's carried on at the school site, the location of the activity has at best a neutral effect. In the latter case, the project appears to the public and others to be an education activity, and the surroundings tend in fact to orient the activity -- in terms of the methods of instruction, the content, the objective, and the supervision -- into the usual education mold. I would emphasize that none of these factors is in itself conclusive, but they do give a flavor to the activity.

The next factor would be the way in which the funds are made available, and by this I mean that it's a lot easier when the funds are turned over as funds to the vocational rehabilitation agency. If it's legally possible and the education agency can just say that here are so many thousand dollars which we are making available to the Vocational Rehabilitation agency to be used under their control for this project of vocational rehabilitation activities, that's certainly a factor that makes it a lot easier for the activities supported by the funds to be considered a part of the vocational rehabilitation program. By contrast, if the funds are made available in the form of personnel or equipment, etc., that doesn't preclude matching of itself, but it's a factor that tends to show that the funds are being spent under the education program.

Finally one item which can be conclusive is the legal obligation of the other program. If for instance an education program has a legal obligation (under statute or otherwise), as contrasted with discretionary authority, to furnish education for all who need it, the furnishing of such education through any of the resources of that agency is obviously in fulfillment of the education agency's obligation. If such agency places personnel or other non-cash items, or even funds themselves, at the disposal of the vocational rehabilitation agency, which then furnishes the very service which the education agency was obligated to furnish, the education agency's resources are obviously being used to carry out its own obligations, and it would be unreasonable to consider that the activity is that of the vocational rehabilitation program and not of the education agency. Moreover to the extent that an economic need item is being furnished, the obligation of the education agency to furnish it would constitute a resource for the vocational rehabilitation client.

The result is that funds derived from the education agency can be matched under the vocational rehabilitation program only where the education agency has a discretionary authority over the funds without a discretionary authority. The education agency couldn't use the funds at all, whether directly or by turning them over to the vocational rehabilitation agency. But the education agency can't have a legal obligation with respect to the funds. So we're walking a legal tightrope here.

To sum up the discussion of factors, no attempt is made here to give relative weight to them. In some cases the arrangement concerning even one of these factors may be such as to preclude acceptance of third party funds for Federal matching purposes under the vocational rehabilitation program. In other situations none of the factors will be individually controlling but a combination might be. Sometimes some factors will point in one direction and others the opposite way. In many cases however the factors will reinforce one another. In a cooperative project with the education agency, for instance, the activity may be carried on at the school; the education agency may be furnishing personnel and facilities and it may be exercising various administative controls, e.g., over the hours of work and things of that sort. Under these circumstances there would seem to be particular need to identify the activity as having a distinctively vocational rehabilitation flavor. Classroom teaching of academic subjects--even though it goes beyond what was previously furnished, and even though it is related to the vocational rehabilitation activities, and has some adaptations for vocational rehabilitation purposes--would appear, at least on first impression, to constitute the carrying out of the education program rather than the vocational rehabilitation program.

I guess it's my job to emphasize the negative factors. Maybe you wonder how any project gets started, but we do have some examples of what we think are very good projects which have gotten under way. My job here today, however, is to emphasize that we are in a very difficult area, that this is something that can be done but it takes great care in the arrangements.

I think I was supposed to mention one other thing which is sort of an exception, and it's the other side of the coin again. I've been assuming here that basically vocational rehabilitation and education have somewhat separate missions, that each is set up under its own authority, and the problem is to try to find things that they can do in common without intruding on each other. But in a few instances there are statutes of other programs which actually key into vocational rehabilitation. The one that's always easy for us is where there's a provision for reduced tuition at the State university, only for vocational rehabilitation clients. Although that's furnished under different authority than the State's vocational rehabilitation statute, it's clearly intended to benefit the vocational rehabilitation clients as part of Vocational Rehabilitation program. Accordingly, we have no problem in recognizing the reduced tuition as State funds made available for vocational rehabilitation.

Another area, and an important area, where this occurs more broadly is workmen's compensation. There you often have a case where the workmen's compensation statute speaks of vocational rehabilitation, and it's really talking not about a different program but a completely-identified, separable, complementary program. There's a lot in the history of the two programs and the way they're developed to indicate that this is just one of the traditional ways of making funds available to the vocational rehabilitation program. In fact, it's about the only way that funds from workmen's compensation sources can be tapped. The legislatures can't always appropriate these funds directly to vocational rehabilitation and so the method that is used to make available to the Vocational Rehabilitation program is to say these funds can be or shall be used for the vocational rehabilitation of injured workmen. So there we have been able, with much less strain perhaps, to find types of situations where these funds can be used under the vocational rehabilitation program and earn Federal matching.

IV

VOCATIONAL REHABILITATION OF DISABLED YOUTH THROUGH COOPERATIVE PROGRAMS: THE TEXAS SCHOOL - DVR JOINT PROGRAM

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It is a privilege and honor to join with representatives from the various States comprising Region IX, and our distinguished colleagues from the San Francisco VRA Regional Office, to pool our knowledge and exchange experiences in order to unite our resources in a mutual effort to advance the welfare of handicapped youth.

All of us are faced today with the challenge of understanding the changing world about us. Within the last two or three decades we have seen a startling shift from a way of life that was primarily agricultural and one of smaller communities to a population explosion of urban centers with an economy based largely on industrialization. Pause, if you will, and reflect that the results of such change have brought us where we are now - a nation of close to 200,000,000 people living in such an atmosphere of plenty that each of us has an average in purchasing power almost three times that of two generation ago. We have the highest employment in our history, the greatest need for trained manpower, the greatest production potential to fulfill promises of sustaining our material standards. Yet millions of young Americans today are unemployed because they are without a saleable skill.

Delinquency is increasing at an appalling rate. Pockets of poverty exist throughout the country; our educational needs are headlining the papers. We are told that only about one-fourth of our handicapped children and youth are given special educational opportunities--the remaining three-fourths find it difficult to keep up in regular classes, or are not in school at all.

The liberal use of our material resources to help solve these serious problems associated with illiteracy, poverty, and crime is evidence of our concern for human resources, and to me is a strengthening of the freedoms and the moral fiber of our society.

Vocational Rehabilitation A Right

When an individual acquires a disability, with resulting marked limitations, it is our philosophy that society owes him as a right the services that can make or retain him as a contributing member of society. Our programs should carry, therefore, a mandate to provide each disabled youth with the opportunity to develop to the fullest extent to which he is capable.

Vocational rehabilitation, as we envisage it, is an activity of government which is inherently a part of the fundamental philosophies of this Nation, and is democracy in its finest form, for it is founded on the rights, and worth and dignity of the individual whence comes the strength of our Nation. By "rights" I do not mean charity or special privilege, nor do I mean rights for the disabled we are currently serving, but for every disabled person who needs and can profit by needed services. While rehabilitation has been a privilege to near a million persons rehabilitated by our State DVR agencies during the past decade, me must now think of rehabilitation for the handicapped as just as much a right as the right to attend public schools, enjoy the protection of the police and fire department, or to enrich one's spiritual value through freedom of religion or the right to other forms of responsible citizenship. We do not think of the individual as a utility of the State, nor in economic or military terms, as compared to Communist-dominated countries, but that people are in and of themselves the greatest value which we strive to create and sustain. Now, if these rights, and the worth and dignity of the individual are not to become sterile, and abstract and meaningless, they must be implemented by such basic human desires and needs as useful employment, mental and physical development, and the esteem which comes from a life of full and useful production.

Program Growth

In the quest for the improvement of the lot of our disabled youth we have moved in just a few years out of the period when a comparative handful of dedicated people promoted the cause of the disabled persons and advanced special education and rehabilitation as an important means of combating the problems and burdens of disability.

Many of you here today have actually seen and been an important part of tremendous advances that have been made in special education and rehabilitation. A quarter of a century ago, there were less than a dozen State Directors of Special Education in this country....none in the South and Southwest....because there were no divisions of special education in our State educational departments. Only in a relatively few wealthy city school systems were there special classes for the physically handicapped -- none for the mentally retarded.

Likewise, vocational rehabilitation was virtually unknown, with services limited to a few so-called scholarships, or the purchase of wooden legs. The total Federal appropriation was $3,500,000 with a portion of that reverting for lack of State matching funds. In contrast today, as you well know, there are programs of special education and rehabilitation in all of our States, number of which are highly developed and outstanding, such as you have in Region IX. The VRA Federal authorization has risen from $3,500,000 to $175,000,000, with a corresponding percent increase in a number of our States. The number of rehabilitants per year has risen from 3,000 to 125,000. The scope and quality of services, in my opinion, have more than kept pace with increased support and production. A similar pattern of program growth has been made in special education.

Provision for Trained Staff

In rehabilitation, as in special education, one of the major obstacles to program expansion has been an acute shortage of trained personnel. Through the leadership and wisdom of our Federal Commissioner, Miss Mary E. Switzer, and the generosity of the Congress, we are beginning to meet that need in rehabilitation.

VRA teaching grants are now made to colleges and universities throughout the country for training in various disciplines, such as medicine, occupational therapy, physical therapy, psychology, speech and hearing, and in rehabilitation counseling for promising personnel. The provisions of P.L. 88-164, for training of teachers in various categories of disablement, should be a great blessing to rehabilitation, for without trained personnel in special education, rehabilitation will get a client with an inadequate background, whose problems are often multiplied to such an extent that rehabilitation is not feasible. Special education today, and certainly in the future, with enriched programs, will bring to rehabilitation a more sophisticated client at an earlier age, thus making our task less difficult.

Program Expansion and Production

Notwithstanding the marked progress during the past decade, our job in rehabilitation is not half done. We hope to rehabilitate 135,000 persons this year, but the known annual increment under present eligibility requirements is twice that number--special education perhaps is in the same boat. At least that is true in the Southwest.

As most of you know, one of the major long range goals of VRA is the development and expansion of the Federal-State programs so as to produce 200,000 rehabilitants annually by 1968. On the basis of current cost and established criteria of eligibility, to increase our annual rate of production by 80,000 rehabilitants, the State agencies will need to create at least 2,000 additional counseling units with adequate supporting staff. The cost of such an increase is estimated at $100,000,000, or an estimated cost of $50,000 for each counseling unit, i.e., salaries, travel, case service, etc. This would mean that the States' share of the estimated increase under the present Federal allotment formula would be approximately $40,000,000. Now I don't know what your experience has been in Region IX with respect to obtaining increased State appropriation, other than I know you are far from having sufficient State funds to earn your full Federal allotment, just as we are in Region VII. We seem to be having increased difficulty in getting State appropriations any way near to match our Federal allotment. Actually the States in Region VII are turning back, or failing to earn, about $10,000,000 of Federal VRA funds this year. This is about the average amount of the Federal allotment unused by the other eight regions.

Third Party Agreements

While it is essential that our direct State appropriations be increased substantially if we are to reach our goal of 200,000 in 1968, we should exploit to the fullest a source of revenue which is indeed substantial and which usually brings to the program many valuable by-products. I have reference to so-called third-party contractual agreements. By such agreements, I mean the development of cooperative programs with other public agencies having legal responsibility for promoting and rendering services to the disabled and whose functions are similar or closely related to vocational rehabilitation. Fortunately our laws, either through special stipulation or by interpretation, in many of our States authorize inter-agency transfer of resources either in cash or "kind", thus enabling public agencies to join efforts in providing services designed to accomplish a mutual objective. Experience has shown that cooperative agreements work to the advantage of rehabilitation divisions and other public agencies such as welfare departments, state hospitals, residential institutions, residential schools, public schools, etc. In Region VII, our State agencies, through third-party contracts, will be able to certify about $2,000,000 received from other public agencies as State funds for Federal matching purposes in 1965. This means that vocational rehabilitation services in the amount of about $6,000,000 will be provided rehabilitation clients which otherwise would not have been available. We are of the opinion that the potential amount of funds through third-party agreements in Region VII is at least $3,000,000 per year. When applied to the country on a population basis, this would mean $30,000,000 of State funds which, when matched with Federal funds, would amount to about $80,000,000 for the rehabilitation of disabled persons.

Major sources of potential third-party funds are public schools (special education), residential schools, and institutions for disabled youth.

We have long felt there is no segment of the rehabilitation program more important than the training and rehabilitation of disabled young people who have before them the possibility, with adequate service, of a full, productive life. Major attention, therefore, should be directed toward effecting comprehensive and coordinated programs with public and private agencies and organizations which have strong common bonds and objectives, with the view of bridging the gap between a protective school or institutional environment to a work-a-day world. Such programs should be designed to reach the disadvantaged youth just as soon as he reaches employable age or shortly before. To do this effectively, arrangements should be worked out so as to begin services while the youth is a "captive audience", so to speak. Since the great majority of our disabled youth are found:

(1) in special education classes,
(2) residential schools - such as schools for blind and deaf and private day-schools for various categories of disablement,
(3) residential institutions for mentally retarded, and at facilities, centers, and workshops,
(4) in small schools located in sparsely settled areas, and
(5) at the time they register with selective service boards,

comprehensive plan would at least involve working agreements between vocational rehabilitation and the agencies or boards responsible for these programs.

Special Education and Vocational Rehabilitation

While the States comprising Region VII have cooperative programs underway to a limited extent with each of their agencies, the cooperative programs with special education offer by far the most rewarding return in terms of numbers served and mass production.

With few exceptions, State Boards of Education throughout the country are charged by law with the responsibility for the development, administration and operation of special education and vocational rehabilitation programs. These programs for the most part have the same ultimate objective, namely the provision of services designed to insure optimum development of all our disabled children and youth. As special education and vocational rehabilitation programs expand and develop throughout the country, it seems important that the facilities and resources of both special education and vocational rehabilitation be so fused as to work towards the successful rehabilitation of eligible clients. It is also important that increased attention not only be given to the coordination of activities, but that the joint effort be so timed as to result in the maximum benefit to the disabled child and youth. Recent experience, sound reasoning, and the very nature and scope and common goals of the two programs seem to show conclusively that cooperative undertakings are sound and result in a substantial saving of public monies. Experience would further indicate that it is administratively feasible and operationally necessary that programs be operated from a school setting, thus providing continuous and uninterrupted service. It has been demonstrated that such a program can be administered without duplication or encroachment of one division on the legal responsibilities of the other and result in the enrichment of the program of each division with more and better services to increased numbers of disabled youth.

Size of Problem

A look at the size of the problem reveals that there are about 1,200,000 disabled children and youth currently enrolled in special education classes throughout the country. On the basis of available data there are 102,000 disabled children and youth enrolled in special education classes in Region VII. Of this number at least 6,000 are of employable age. When applied to the country, the number would approximate 60,000. With few exceptions they meet eligibility requirements for vocational rehabilitation services. Rough estimates would indicate that about one-half have speech impairments, one-fourth are mentally retarded, and one-fourth are disadvantaged due to visual and hearing loss, crippled conditions and emotional maladjustment.

Development in Region VII

In 1957, following a regional conference sponsored by Southern Methodist University designed to explore ways of developing more effective cooperative relationships between special education and vocational rehabilitation, our regional office in cooperation with the Texas Education Agency and the Dallas Independent School System, developed a pilot Extension and Improvement project which provided the prototype for our present cooperative programs now in operation throughout the region. The pilot project met with such marked success, as evidenced by the fact that 58 percent of the total number of 90 served were rehabilitated in suitable jobs at the end of the second school term, earning a total sum of approximately $1,200 per week, as to gain State and regional recognition. I am confident the project ignited the spark that stimulated State Commissioners of Education and State Boards throughout the region to authorize statewide programs in centers of population with sufficient numbers of students to justify a program.

Our regional office working with Mr. Joseph Hunt, Assistant Commissioner of VRA, and Mrs. Emiley Lamborn, Deputy Assistant Commissioner, VRA, along with advice from General Counsel, State Attorney General, State Directors of Special Education and Vocational Rehabilitation, School superintendents, Special Education consultants from large school systems and State Universities put together the so-called Texas Plan of which you have a copy and which has been widely distributed by VRA to State Vocational Rehabilitation and Special Education divisions throughout the country. In addition you have (1) copies of my letter of March 14, 1964, addressed to Mr. F. E. Hart which treat primarily with essential controls and program financing and (2) my memorandum to Miss Switzer of May 5, 1964 setting forth a suggested formula for auditing purposes. These materials have also been distributed by VRA.

Time will not permit me to discuss the provisions of these documents and I am sure that is not necessary. However, it might be well to point at the following which are considered essential requirements for Federal financial participation.

1. Responsibility for administration. (Section 401.6 Federal Regulations) ".....all decisions affecting the eligibility of clients, or the nature and scope of VR services to be provided, will be made by the State agency.... and that this responsibility will not be delegated to any other agency or individual."

2. State vocational rehabilitation funds. (Section 401.49, Federal Regulations) Public funds (from any source) may be considered as State vocational rehabilitation funds provided the funds are expended at the sole discretion of the State vocational rehabilitation agency for purposes which it designates. The State agency must be the final authority in the State for determining the kinds of expenditures to be made and what expenditures are necessary. The expenditures also must be made for purposes clearly identified with the vocational rehabilitation program. Funds do not have to be made available directly if their use, or the use of items paid for by the funds, is placed at the disposal of and control of the vocational rehabilitation agency in such a way as to be consistent with the sole State agency principle.

3. Personnel
   When expenditures are made by another State agency for salaries of personnel engaged in vocational rehabilitation work, the following applies:
   (a) Personnel are subject to the same or equivalent qualification standards and tenure standards applicable to all employees of the vocational rehabilitation agency.
   (b) Personnel selection is subject to approval of the vocational rehabilitation agency.
   (c) Separation of personnel by cooperating agency is subject to approval of vocational rehabilitation agency.
   (d) When engaged in vocational rehabilitation work, personnel shall be under the supervision and direction of the vocational rehabilitation agency and no other agency.

4. General
   (a) There should be State legal authority and clearance.
   (b) The vocational rehabilitation agency should have control over day-to-day operation.
   (c) The services must be vocational rehabilitation services authorized under the State Plan.
   (d) The services are restricted to vocational rehabilitation clients.
   (e) There should be no duplication of services, i.e., vocational rehabilitation cannot assume responsibility for providing services if the client is entitled to the same under the program of the agency furnishing the funds.

It is suggested that you read the materials referred to above carefully before developing plans and contractual agreements and that you consult with your regional offices and obtain formal approval before inaugurating a cooperative program.

In Region VII we now have 108 cooperative Special Education-Vocational Rehabilitation programs operating in centers of population. The enrollment is approximately 4,000. It is expected this caseload will produce approximately 1500 rehabilitation closures this year at a per capita cost less than the average for other rehabilitants. Assigned to these programs are about 25 full time counselors employed by the VR agencies and the equivalent of about 60 full time vocational adjustment coordinators employed by the various public school systems but assigned to work under the direct supervision of the Vocational Rehabilitation Division.

In our opinion the program is economically, socially, and educationally sound and practicable of accomplishment.

Dr. Samuel Kirk has said that "Vocational Rehabilitation when properly administered becomes the final link in our institutional special class, and social and occupational adjustment programs. It is the link that will complete the program to adjust these individuals in becoming socially adequate and productive members of our society. The crucial test of all programs is what can be done at the vocational rehabilitation level, since everything that is done must end up in success at the occupational level or all previous efforts are failure."

CONFERENCE PROGRAM

REGIONAL INSTITUTE
JOINT PROGRAMS IN VOCATIONAL REHABILITATION

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Monday AM

Chairman: E. L. Chouinard
Associate Regional Representative

9:30-10:00 "Joint Programs Involving Use of Third Party Funds"
Philip Schafer, Regional Representative

10:00-10:30 Business Session and Break

10:30-Noon "Use of Third Party Funds in Joint Programs"
Mrs. Emiley Lamborn, Deputy Assistant Commissioner, State Program Administration, VRA
Joel Cohen, Office of General Counsel, DHEW, Washington, D.C.

Monday PM

Chairman: Philip Schafer
Regional Representative

1:30-2:15 "The Texas Special Education-VR Program"
Doyle Best, Regional Representative, VRA Region VII

2:15-3:15 Panel: The Tacoma School-DVR Program

Moderator: E. L. Chouinard
Irvin F. Bryan, Supervisor, Extended Services Program, Washington DVR
Henry J. Bertness, Assistant Superintendent Pupil Personnel Services, Tacoma Public Schools
H. J. Socolofsky, Director, Federal State Services, Washington DVR

3:15-3:30 Break

3:30-4:30 Panel plus Mrs. Lamborn, Doyle Best and Joel Cohen.
Open Discussion.

5:00-6:00 Social Hour

Tuesday AM

Chairman: Gerald Mann
Rehabilitation Services Consultant, California DVR

9:00 General Session

Charge: What Small Groups are to do.
James Walker, Chief, California DVR

9:30-Noon Small Discussion Groups (5)

	Leader	Recorder
1.	Dale Williamson	Kevin Morrison
2.	Gerald Mann	Milton Pentecost
3.	Stanley Merrill	Woodrow Speir
4.	E. L. Chouinard	Richard Stoner
5.	Dave Orzech	Ray Barton

a. A District Supervisor looks at his district.
b. Types of programs involving third party funds.
c. Preliminary steps or approaches to be taken.

Tuesday PM

1:30-4:30 Continuation of small groups

Development of a written outline of major aspects of an operational cooperative plan.

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Resource persons for small groups:

Irvin Bryan (school)
Henry Bertness (school)
Mary Barreca (school)
Sanford Kalwara (school)
Doyle Best (school)
Marvin Piccolo (school)
Harry Lucas (school)
Mrs. Emiley Lamborn

Frank Hart (hospital facility)
Warren Thompson (")
Ron Hammett (")
David Berger (")
C. M. Craft (workmen's compensation)
Gerald McCue (")
Joel Cohen

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Each group will be required to have a written report on Tuesday's work ready by Tuesday closing--to be reproduced and handed out Wednesday morning. (Reports will be basis of Institute Report to be edited and distributed after the Institute)

Wednesday AM

9:00-Noon	Group meetings by States

How to Implement Joint Programs at the Local Level.

Group 1 - California
Group 2 - Oregon
Group 3 - Washington
Group 4 - Alaska, Hawaii and Nevada
Group 5 - Arizona

Discussion of plans for action the respective States: How do we implement what we have been talking about?

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APPENDICES

Appendix A

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Vocational Rehabilitation
Washington 25, D.C.

REGIONAL REPRESENTATIVES' MEMORANDUM NO. 438, SUPPLEMENT 2

TO: Regional Representatives, OVR

FROM: Joseph Hunt
Assistant Director

SUBJECT: The Use of State Funds Derived from Public Sources for Matching Purposes

This policy statement supplements the material in Regional Representatives' Memorandum No. 438 and Supplement 1 to that memorandum. It contains excerpts from a memorandum which was prepared recently in response to a question in one of the regions and covers funds from public sources defined in Section 401.49(a) of the Regulations.

I. General Data

Over 90% of all State funds consist of State appropriations earmarked specifically for vocational rehabilitation or of allotments for vocational rehabilitation from departmental appropriations. If "other authorized State funds" are included, over 95% of the funds may be said to be appropriated by State legislatures. Local public funds account for about 1% of total State funds and contributions for about 1%. The remainder is unobligated balances from previous years.

These national percentages have tended to remain approximately the same for a number of years but State-by-State there are of course variations from time to time.

II. Public Funds

Section 401.49(a) of the Vocational Rehabilitation Regulations applies to funds derived from public sources. It covers funds made available by appropriations directly to the vocational rehabilitation agency, funds made available by allotment or transfer from general departmental appropriations or "funds otherwise made available to the State or local rehabilitation agency by any unit of State of local government."

The conditions in Section 401.49(b) of the Regulations regarding the consideration of contributions as State funds are not applicable to public funds. For example, the "donor" rule relates to contributions, not to funds obtained from public agencies.

Ordinarily, direct appropriations, allotments from appropriations and transfers from a general departmental appropriation meet the matching criteria for Sections 2 and 3 of the Vocational Rehabilitation Act since such funds are under the control of the State vocational rehabilitation agency and are spent for vocational rehabilitation purposes. Since the bulk of funds in this State has been derived from direct appropriations or allotments from appropriations, our only comment on this source is that some States have requested and received supplemental appropriations in order to meet the needs of the expanding program.

A. Transfer of funds from general departmental appropriations and State funds otherwise made available for vocational rehabilitation.

In some States arrangements have been made for the transfer of funds between State departments or for some other method for making additional State funds available for vocational rehabilitation. A transfer of funds, as such, is probably the most desirable method to ensure control over the use of the funds by the State vocational rehabilitation agency. Other methods for making funds available for vocational rehabilitation are described in B below. We have not summarized all the sources used by State agencies, but a partial list would include funds transferred or otherwise made available to vocational rehabilitation agencies from special education, health, mental health, welfare and State institutions. In making such arrangements, several considerations should be borne in mind. If a high proportion of vocational rehabilitation funds is derived from other State departments, fiscal planning becomes uncertain. There may develop a tendency to emphasize one area of program service at the expense of others. On the other hand transfers and other arrangements for specific purposes may be a useful device for developing cooperative planning and efforts in developing new areas of services, in extending services to certain groups of clients or expanding rehabilitation operations in general.

Transfers and other earmarking arrangements between State agencies for making additional funds available for rehabilitation have often been made in order to develop a particular program emphasis, such as the rehabilitation of the mentally ill, mentally retarded or some other disability category. In some cases the funds are used for specialized staffing and case services to serve a particular disability group. In other cases the funds are used to establish a needed facility or workshop under either State or private auspices.

Arrangements are also sometimes made for matching State funds for the operating costs of State-operated rehabilitation facilities. If the State-operated facility serves only rehabilitation clients, all costs related to rehabilitation services may be considered. If the State-operated facility also serves non-rehabilitation clients, only that portion of the operating costs related to rehabilitation clients may be considered. Where such a facility is operated under State auspices not under the control of the State vocational rehabilitation agency, important considerations are the extent to which services are available to non-rehabilitation clients and the extent to which expenditures are made under the direction or control of the State vocational rehabilitation agency. Criteria for matching expenditures by other State agencies are discussed in further detail under that heading.

B. Expenditures by other State agencies.

The basic criteria for determining whether or not expenditures made by State agencies other than the State vocational rehabilitation agency can be considered subject to Federal matching is that there be a valid expenditure of State funds by reason of (rather than for incidentally furnishing) vocational rehabilitation services and that Federal requirements as to the "sole State agency" be observed.

There are three conditions which must be fulfilled in order for an expenditure by a State agency other than a State vocational rehabilitation agency to be recognized as matchable with Federal funds under the Vocational Rehabilitation Act. These conditions obtain regardless of whether such expenditures are made for vocational rehabilitation services provided directly to handicapped individuals or for a category such as the establishment of a facility or workshop. They likewise prevail in the case of expenditures for administrative purposes. The three conditions are the following:

1. The expenditure must be made for a purpose clearly identified with the vocational rehabilitation program and covered under the approved State Plan.

2. This expenditure, in addition to being authorized under State law, must constitute an actual expenditure by the State for vocational rehabilitation.

3. The expenditure must be made under the control and at the discretion of the State vocational rehabilitation agency--for a purpose which such agency designates and under circumstances of which it is fully cognizant.

The basic meaning of item 2 and the heart of its distinction from item 1 consists in this: funds expended by a State in behalf of an individual who is a vocational rehabilitation client do not constitute an expenditure for vocational rehabilitation merely because a service within the "vocational rehabilitation services" definition is involved. If the recipient of such a service, for example, is entitled to that service under another State program regardless of whether he is a vocational rehabilitation client, the fact that the person is a client does not make the cost of the service rendered him transferrable as a cost of vocational rehabilitation services.

With respect to item 3 above, the important criteria is that the State rehabilitation agency must be the final authority in the State for determining the kinds of expenditures to be made and what expenditures are necessary. This, of course, would not preclude consultation between the respective staff members of the rehabilitation agency and the other State agency involved. Additional information on policy relating to expenditures by other State agencies is contained in item 2, p. 2, of Regional Representatives' Memorandum No. 438.

When funds are expended for vocational rehabilitation by a State agency other than the State rehabilitation agency, several methods have been used to ensure that they are expended at the discretion of the State rehabilitation agency. Some States have made arrangements for the setting up of a special fund by the department or agency making the funds available for rehabilitation. Sometimes there is a written agreement, including a budget, between the agencies involved. In other cases vouchers for payments from a special fund must be signed by an appropriate official in each of the agencies concerned. Where arrangements such as these are involved it is highly recommended that the advice of the State Attorney General, Comptroller, or other appropriate official be sought as to the applicability of State fiscal laws and regulations.

1. Reduction in rates at State universities and hospitals.

In some States arrangements have been made for reduction in tuition costs for rehabilitation clients at universities, colleges or other schools supported by the State or its political subdivisions. The difference between the amount charged for vocational rehabilitation clients and the amount charged other residents of the State is an actual expenditure of State funds since these schools are supported from funds obtained from State or local sources. In such cases, records must be maintained showing clearly the amount of tuition charged other residents of the State and the amount of such costs that are being assumed by the school because the student is a vocational rehabilitation client.

Similar arrangements have also been made for reduction in hospital rates for rehabilitation clients at hospitals operated under State auspices or those of a political subdivision. The basic principles are those set forth in Regional Representatives' Memorandum No. 438. They derive from the provisions in Sections 401.3(d) and 401.49(a) of the Regulations, which in turn are rooted in Sections 5(a)(1) and 5(a)(5) of the Vocational Rehabilitation Act. Briefly, a reduction in the charge for services by a public agency is matchable only when it is allowed solely to the rehabilitation agency and solely on the basis that the individuals served are rehabilitation clients.

2. Office space.

Some States receive matching in relation to the costs of office space. Section 401.48 of the Regulations is applicable to such costs.

3. Other selected expenditures by State agencies other than the State rehabilitation agency.

As in the case of a number of other States, this State receives matching in connection with retirement contributions. It also receives matching in relation to administrative charges meeting the conditions of Section 401.46 of the Regulations.

C. Other sources of State funds.

There are several other sources of State funds in use in some States. In most cases they are turned over to the State rehabilitation agency either in advance or by way of reimbursement. In some cases although the funds are spent by another State agency they meet the matching criteria discussed above.

1. Set-aside funds.

From conversations and correspondence with the State Director last year we understand that this State has never claimed Federal matching on any expenditure from set-aside funds. The principles governing the matching of such funds are contained in our letter of December 31, 1959 to the State Director.

2. Scholarship funds.

Some States have appropriations to be used for scholarships for a specific disability group such as the blind or the deaf or for the disabled in general. Sometimes these funds are administered by the State rehabilitation agency, sometimes by State universities or other State agencies. If such funds are available to any resident of the State within the disability category, regardless of whether or not the individual is a rehabilitation client, they are not subject to matching. If, however, the expenditures from the fund are limited to vocational rehabilitation clients and are spent in accordance with the individual rehabilitation plan and the vocational rehabilitation agency has the responsibility for the selection of the vocational rehabilitation clients and the formulation of their training plans, then the expenditures meet the criteria for matching.

3. Governor's Committee for Employment of the Physically Handicapped.

The policies governing Federal financial participation in activities of Governors' Committees and local affiliates of the President's Committee of Employment of the Physically Handicapped are contained in Regional Representatives' Memorandum No. 505.

4. Workmen's Compensation.

The basic principles that apply in determining whether public funds, like workmen's compensation funds, can be judged to be State funds for matching purposes, are those discussed above--that the funds be spent:

(1) for vocational rehabilitation purposes under the approved State plan, and

(2) under the direction of and at the discretion of the State vocational rehabilitation agency.

Although payment of workmen's compensation funds to the vocational rehabilitation agency on either a case-by-case or a lump-sum basis is permissible under the Act and Regulations, where the case-by-case basis is used it becomes all the more important that there be clear assurance that the funds are to be spent "under the direction of and at the discretion of the State vocational rehabilitation agency."

There are a number of considerations we wish to note as being particularly important.

1. It would be highly desirable that there be as a workable base a fairly steady amount of workmen's compensation funds that would be coming to the vocational rehabilitation agency.

2. Also desirable would be assurance as to prompt referral of workmen's compensation claimants to the State vocational rehabilitation agency.

3.. Further, it would be highly desirable that the workmen's compensation funds be available to the State vocational rehabilitation agency for as general a purpose as is consistent with State law. If specific designation is required in the situation, the workmen's compensation funds could be designated as being for case service or payment of the salary of staff specializing in the industrially disabled, for example, as long as salaries are not contingent upon caseload volume.

In this connection, it would be preferable not to specify the workmen's compensation funds should be used for specifically designated services such as maintenance.

4. It should be clear that the decision as to vocational objectives and methods to achieve these objectives is with the State vocational rehabilitation agency rather than the State workmen's compensation agency. This would not preclude consultation.

5. It should also be clear that the services provided do not include those to which he is already automatically entitled under the State workmen's compensation law.

D. County and other local public funds.

The same criteria are applicable here as are applicable to public funds from State sources other than those directly appropriated or allotted for rehabilitation. In a State-operated rehabilitation program, however, it is important that it be clear and certain that the funds are truly available for expenditure for vocational rehabilitation purposes at the sole discretion of the State agency. For example, it is of paramount importance that county funds be usable for both county and non-county cases, as determined by the State agency. As with other public funds it is important that the expenditure be for vocational rehabilitation purposes and not for purposes to which any county resident is entitled regardless of his status as a vocational rehabilitation client. The expenditure must be made under the direction and control of the State agency.

III. Contributions

Section 401.49(b) of the Regulations is applicable to the matching of contributed funds. Basic criteria are contained in Chapter 12, Section 1, pages 12-1-7-12-1-9 of the Vocational Rehabilitation Manual. They are discussed also in Regional Representatives' Memorandum No. 438, Supplement 1. An earlier discussion is contained in Regional Representatives' Memorandum No. 387.

Although the basic principles in considering the matchability of State funds are stated in Section 401.49 of the Regulations, the application of these principles to individual circumstances often involves technical legal points. If you have any questions about particular arrangements we shall be glad to review with you all the facts and circumstances and advise as to whether or not the matching criteria are met.

Appendix B

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Vocational Rehabilitation Administration
Washington 25, D.C.

September 3, 1963

ADMINISTRATIVE SERVICE SERIES NO. 64-7

TO: State Boards of Vocational Education; Divisions of Vocational Rehabilitation; Commissions and Other Agencies for the Blind.

SUBJECT: Cooperative Programs for the Rehabilitation of Disabled Youth of School Age.

We are all becoming increasingly aware of the need to focus on the rehabilitation potential of our disabled young people. Many States have been developing new and active relationships between vocational rehabilitation agencies and education agencies in order to enlarge the scope of existing services and to introduce new services and programs needed in rehabilitating this group.

Some of these programs have been initiated for a particular group of the disabled, such as the mentally retarded. Others have covered all those in special education classes, whatever the disabilities may be. Some programs have been undertaken on a State-wide basis and some in one city or school unit. Most relate to youth of high school age, although some related to those in junior high where this is appropriate.

The prototype for a joint arrangement between the schools and vocational rehabilitation for the rehabilitation of the mentally retarded is being sent to you. It is based on experience with such programs in several States. It is hoped that a number of States will develop Selected Demonstration projects based on this prototype. It is also hoped that these projects after completion will be absorbed into ongoing State programs.

In planning such undertakings as part of the ongoing State programs it is important to bear in mind the State-wide application of the State Plan. This does not preclude the introduction in one area of a new pattern of services, but does mean that provision should be made for the extension of the new pattern to other areas as appropriate. It is not necessary, of course, for the State rehabilitation agency to use exactly the same methods everywhere since allowances must be made for the fact that facilities and other resources not under the control of the State vocational rehabilitation agency are available in some locations and not in others.

Some of the activities described in the prototype are primarily educational in nature and some are primarily rehabilitation. There are others which are really a welding of the two and bridge the gap between the programs. In planning a selected demonstration in this area and planning for its later absorption into ongoing programs, these distinctions should be borne in mind in order to utilize most fully both resources and to provide for adequate financing.

Attached to this memorandum is a copy of an opinion from the Office of the General Counsel of the Department of Health, Education, and Welfare on "VR--Funds made Available to VR Agency from Public Sources in Form of Personnel and Equipment." Also attached is a copy of a letter written by one of the Vocational Rehabilitation Regional Representatives in reply to a request from a State agency for information on the cooperative undertaking in Texas.

I am sure you will find both of these documents useful in planning and administering similar undertakings under Section 2 and Section 3 of the Vocational Rehabilitation Act. They will also be useful to you in planning for long range financing of selected demonstration projects in this area and their later absorption into the ongoing State vocational rehabilitation programs.

For convenient use, you may want to cross reference this release with its attachments to the Vocational Rehabilitation Manual, Chapter 12, Section 1, pages 7-9.

(Signature)
Joseph Hunt
Assistant Commissioner

Attachments

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OFFICE OF THE GENERAL COUNSEL

TO: General Counsel Files

November 19, 1962

FROM: Joel Cohen, Assistant Chief
Welfare and Education Division

SUBJECT: VR--Funds Made Available to VR Agency from Public Sources in Form of Personnel and Equipment

As the State vocational rehabilitation programs and resources continue to grow, not only are more cases rehabilitated, but attempts are made to reach the more difficult cases. One aspect of this development has been the increasing exploration of the frontier areas between vocational rehabilitation and other programs, such as education and mental health. For instance, it is not enough for the educational system to do its best by a handicapped child and then turn him over at, say, age 18, to the vocational rehabilitation program. There must be coordination and joint effort at an early stage. The basic program purpose of making fit for employment all handicapped individuals who are feasible for vocational rehabilitation can be achieved only if the existing legal authority under the vocational rehabilitation program is fully implemented.

On the other hand there can be no Federal financial participation in vocational rehabilitation activities which are not authorized by law.

We here consider some of the legal problems which, though pertinent in other situations, have particular significance in these frontier areas. Special problems exist here even if the State's share of these vocational rehabilitation activities is financed through the regular appropriations to the vocational rehabilitation program. The problems are much intensified, moreover, when, as is often the case, vocational rehabilitation funds are not directly available, and the State's share under the vocational rehabilitation program is financed through funds derived from other State or local agencies.

First, we look at some problems which arise regardless of the source of funds:

(1) The services must be vocational rehabilitation services.[1/] There are many aspects of this problem. For instance, the recipients of the services must be old enough so that there is a relationship between such services and the fitting of the individual to engage in a remunerative occupation. We begin at birth to learn the skills that will be needed in our occupations. Nevertheless it is difficult to support the existence of a sufficiently direct relationship between services and employment until the child has reached at least his teens, and usually his middle teens. In addition, the recipient of services must be a vocational rehabilitation client. As required by section 401.14 of the Regulations, the State plan must provide that, prior to or simultaneously with acceptance of the handicapped individual for vocational rehabilitation

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[1/] The provisions of the State plan must, of course, cover the activities in question.

services, there must be a certification that the individual has met the basic eligibility requirements, including a determination that vocational rehabilitation services may reasonably be expected to render him fit to engage in a remunerative occupation. In this connection, it has been recognized that diagnostic services, including vocational and other educational factors, are necessary as part of the process of determining whether or not an individual qualifies as an eligible client, and such diagnosis may be Federally matched as vocational rehabilitation services. Nevertheless, it seems clear under the statute that any on-going services, whether in the medical, training, guidance or other areas, may be matched only if given to clients who have been determined to be eligible.

(2) The services must be furnished under the vocational rehabilitation program. Many of the kinds of services that are included in the definition of vocational rehabilitation services are regularly furnished under such other States or local programs as education, health, crippled children's services, and public assistance. In the formulation of the shape of the vocational rehabilitation program, with emphasis on using limited resources to serve the maximum number of individuals who are feasible for vocational rehabilitation, due regard would presumably be given to the traditional role of these other programs. However, there are some activities which are sometimes carried on under other programs, but with insufficient coverage or quality to meet vocational rehabilitation needs. A State which increases its activities in vocational guidance for the handicapped, for example, might do so under either its education program or under its vocational rehabilitation program. Federal matching would be available under the Vocational Rehabilitation Act only to the extent that the guidance services are actually furnished under the vocational rehabilitation program.

What this really amounts to is that any public funds are suitable for furnishing the State's share of expenditures for vocational rehabilitation services, provided that the funds are placed at the disposal of the State vocational rehabilitation agency, and are used, in a way that is consistent with the sole State agency principle. Section 401.49(a) of the Regulations, dealing ostensibly only with Federal financial participation, also operates to exclude from the vocational rehabilitation program expenditures which, if matched, would in all likelihood give rise to a conformity question under the sole State agency principle.

(3) Where Federal matching for particular services is conditioned upon economic need of the client, the client must not be entitled to receive the services from the State under a program other than the vocational rehabilitation program. Thus, even where an individual is clearly a client and particular services (conditioned upon economic need for Federal matching purposes) are furnished to him under the vocational rehabilitation program, his entitlement to the same services under another program constitutes a resource which must be looked to.

Even in the frontier areas, the foregoing factors give rise to relatively little difficulty when the State's share of expenditures is financed from the regular State appropriation for vocational rehabilitation. In such situations, it is usually quite clear that the services are in fact being furnished under the vocational rehabilitation program and that State personnel involved in furnishing such services are vocational rehabilitation personnel. Moreover, the State in such cases would, in the regular course of things, automatically apply its usual rules for making sure that the recipients of the services are vocational rehabilitation clients and that the services may be furnished to them under the vocational rehabilitation program with Federal matching.

The situation often arises, however, where the vocational rehabilitation program does not have extra resources for expansion, but the education or health agency does. An attempt may then be made to employ the excess funds from such other agency under the vocational rehabilitation program. The purposes are to give a proper vocational rehabilitation focus to the activities and also to earn Federal matching under the vocational rehabilitation program. Any instance of this sort is likely to involve some potential distortion of the purposes for which State funds were appropriated, and care must be exercised to assure that the funds have truly been made available to the vocational rehabilitation agency. As stated to Regional Representatives' Memorandum Number 438, December 8, 1955, the funds

> ". . .must be expended at the discretion of the State rehabilitation agency for purposes which it designates. The State rehabilitation agency must be the final authority in the State for determining the kinds of expenditures to be made and what expenditures were necessary. The expenditures also must be made for purposes clearly identified with the State vocational rehabilitation program and covered by the State Plan. This is more apt to be the case where administrative expenditures or expenditures for the establishment of a facility or workshop are involved, than where the expenditure is for a service to a particular individual."[2]

Where the funds are used for furnishing vocational rehabilitation services to clients, section 401.3(d) of the Regulations is pertinent. This provision reads:

> "(d) Responsibility for Administration.
> The State plan shall provide that all decisions affecting the eligibility of clients, or the nature and scope of vocational rehabilitation services to be provided, will be made by the State agency, or by a local rehabilitation agency under its supervision, and that this responsibility will not be delegated to any other agency or individual."

The funds do not have to be turned over to the State agency by transfer or some other procedure to be considered available for vocational rehabilitation. Nevertheless, when the funds are purported to be made available, as funds, to the vocational rehabilitation agency from another agency, it is usually possible to determine by some objective test whether this has been ~~accomplished.~~ There may be an actual transfer of the funds, or the vocational rehabilitation agency may be empowered to draw upon the funds by voucher, or there may be an express agreement between the vocational rehabilitation agency and the other agency as to the use of the funds. In such cases, the arrangement is overt and the underlying authority for the procedure can be readily checked with the appropriate State legal authority. Accordingly, it becomes ascertainable whether the funds have in end result truly been reduced to the control and use of the vocational rehabilitation program.

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[2] In the establishment of a rehabilitation facility or workshop, the State agency has basically to make but a single non-recurring decision--whether to approve, and apply the funds to, the particular project--and it needs control of the funds only for this purpose. Once the decision is made, the funds, whence-soever derived, are given away.

More difficult problems arise when funds of another agency are purported to be made available to the vocational rehabilitation agency in the form of use of personnel or of supplies and equipment.[3/] First of all, it might be argued that the words of section 401.49(a) of the Vocational Rehabilitation Regulations are not satisfied since "funds" are not being made available directly. But, as has already been suggested, this bridge was crossed long ago. "Funds" are "made available" if their use, or the use of items paid for by the funds, is effectively placed at the disposal of the vocational rehabilitation agency. This principle is discussed in Regional Representatives' Memorandum Number 438, December 8, 1955, as follows:

> "If the expenditures made by the other State Department involve the salary of an employee, such as a rehabilitation counselor, the matching would depend on the control of the State rehabilitation agency. For example, if the Industrial Accident Commission or a State Hospital employs a full time counselor as a member of its staff, and the counselor is administratively and technically supervised by the Commission or Hospital, he is an employee of that State agency and not of the State rehabilitation agency and expenditures for his salary are not matchable. On the other hand, if the counselor is actually an employee of the rehabilitation agency and is stationed in the Commission office or the Hospital which exercises merely nominal supervision in the sense of setting his hours of work, and seeing that his activites do not conflict with the overall program objectives of the Commission or Hospital, expenditures for his salary are reimbursable to the extent of time devoted to rehabilitation activities as such. In this connection, section 401.3(d) of the Regulations is pertinent."

[3/] Section 401.46 of the Regulations provides that, under specified conditions, "Federal financial participation will be available in expenditures under the State plan for payment of the costs incurred by other agencies of the State furnishing goods, facilities, or services to the State agency." Ordinarily, such expenditures involve purchases by the vocational rehabilitation agency from other State agencies through the use of vocational rehabilitation funds. If Federal matching under the vocational rehabilitation program is sought under authority of section 401.46 for goods, facilities, or services furnished with funds of another State agency, the requirement that the expenditures be made "under the State plan" would connote the necessity of the same degree of discretion and control by the vocational rehabilitation agency as indicated in this memorandum in relation to the requirement under section 401.49(a) of the Regulations that "funds" be "made available" to the vocational rehabilitation agency.

It should be emphasized that in this type of situation not only must all the various requirements, discussed above, be satisfied, but they take on a new dimension. Thus, it may be claimed that employees hired by the education agency, subject to the administrative rules and procedures of the education agency, and working in space of that agency, are in fact working for all or part of their time under the vocational rehabilitation program. Usually, moreover the activity purported to be carried on under the vocational rehabilitation program is one which the education agency could itself carry on. (Otherwise there might be a question as to whether the education agency could use its funds at all for that activity, either under its own program or under the vocational rehabilitation program.) Under such circumstances, whether or not Federal matching is conditioned upon economic need of the client, the client must not be entitled to receive the services under the education program. If the client is so entitled, it would strain credulity to accept that the services are being furnished to him with education funds, but under another program.[4/]

Even where the client is not entitled to receive the services under the program of the education (or other) agency which furnished the funds, we are faced with a situation where it would appear, prima facie, that the funds are being spent under the program of such other agency, and not under the vocational rehabilitation program. Nevertheless, such countervailing factors as the following would be pertinent in determining the substance of the arrangement:

a) Personnel are subject to the same or equivalent qualification standards and tenure standards applicable to all employees under the vocational rehabilitation program.

b) Selection of personnel working on the project is subject to approval of the vocational rehabilitation agency.

c) Services of personnel will no longer be paid for by the vocational rehabilitation agency or, if paid for by the other agency, will no longer represent matchable State funds, if the vocational rehabilitation agency terminates such services under the vocational rehabilitation program. Conversely, separation of personnel by the other agency is subject to approval of the vocational rehabilitation agency.

[4/] Similarly, where another State or local agency charges a reduced rate for a service ordered by the State rehabilitation agency as part of a client's rehabilitation plan, such reduction in charge may be considered as an expenditure of State funds for vocational rehabilitation, but only if it is allowed solely because the individuals served are clients of the State vocational rehabilitation agency. If the reduced rate is allowed more generally, the reduction in charge is not clearly identifiable as part of the vocational rehabilitation program, rather than of some other program.

d) In all significant aspects of their vocational rehabilitation work, the personnel shall be subject to the supervision of the vocational rehabilitation agency, and of no other agency.[5]

e) The project shall be considered as part of the vocational rehabilitation program only to the extent that vocational rehabilitation services are furnished to vocational rehabilitation clients (or, with respect to diagnostic services, potential clients) in accordance with the State vocational rehabilitation plan.

f) Title to equipment purchased under the vocational rehabilitation program must be vested in the vocational rehabilitation agency, and not in the agency furnishing the funds.

It is highly desirable, if not essential, that the details of the arrangement between the vocational rehabilitation agency and the other agency be formalized in a written agreement. This will avoid misunderstandings and will facilitate review by State legal authorities to assure that there is authority under State law to use funds of another agency in this manner under the vocational rehabilitation program.

In conclusion, the Office of the General Counsel has agreed in certain situations where another State agency has furnished personnel and equipment to the State vocational rehabilitation agency, that a determination by OVR that public funds have been made available to the State vocational rehabilitation agency, within the meaning of Section 401.49(a) of the Regulations, would not be unreasonable. Such a conclusion has been reached only when it was indicated by all of the factors discussed in this memorandum. Our opinions and clearance have applied the legal authority under the Vocational Rehabilitation Act to what we believe to be its utmost limits, in order to give the maximum scope to what may be done under the vocational rehabilitation program. Any extension of this approach, as by recognizing for Federal matching any situation where there is any less discretion, or control of personnel or program, by the vocational rehabilitation agency, would appear to move clearly beyond legal authority.

J. Cohen: agp

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[5] The other agency may of course supervise the non-vocational rehabilitation activities, may advise the personnel on coordinating their various activities, and may exercise administrative supervision on such matters as hours of work. The memoranda have been confusing. One states that the vocational rehabilitation agency must exercise "technical" supervision, while the other agency may exercise "administrative" supervision. Another states that the vocational rehabilitation agency must exercise "administrative" supervision, but apparently intends no different result. However it is stated, the vocational rehabilitation agency must have control over decisions as to whom the personnel serve and how they serve them. As a practical matter, the vocational rehabilitation agency may exercise little actual day-to-day control over professional personnel on its own payroll, but the right to control--to direct priorities, emphasis, etc.--must be present.

November 19, 1962

CHECKLIST

(For Federal matching under vocational rehabilitation program where other State agency furnishes personnel and equipment to State vocational rehabilitation agency for furnishing services to individuals.)

Scope of Project

Does VR agency have responsibility for determining the scope of the project as it affects VR program -- what will be spent for furnishing what, to whom, and how?

Does the VR agency have responsibility for, and control over, the day-to-day operation of the project?

Does the State plan cover this activity?

Is there a written agreement between the VR agency and other agency?

Is there State legal clearance for the arrangement?

Services to clients

Are the services being furnished to VR clients? See memo, item (1), p. 1.

Is the VR responsible for determining eligibility, and the nature and scope of services, in accordance with Regs. Section 401.3(d)?

Are the services vocational rehabilitation services? See memo, item (1), p. 1.

Is the client entitled to the service under the program of the agency furnishing the funds?

For any service conditioned on economic need, is the client entitled to receive it from any other source?

Is the client in fact receiving the service under the VR program, and not under another program?

Control over personnel and equipment

See memo, items (a) - (d), (f), p. 6.

March 14, 1963

Dear _____________,

This is in reply to your inquiry concerning the administration and operation of the Texas Cooperative Program, between the State Divisions of Special Education and Vocational Rehabilitation and local Independent School Districts. You ask specifically about: (1) fiscal provisions (legal limits that might be permitted in any such arrangement, (2) how much control the Vocational Rehabilitation Agency has over the Vocational Adjustment Coordinator in the school district, and (3) how much control the Vocational Rehabilitation Division has over the training program in the school.

In the inauguration of a special program of this type and scope, where a high degree of local cooperation and participation is present and essential, we not only encounter all the usual problems inherent in the regular vocational rehabilitation program, but have found there are two major areas, as you have detected, which can become extremely complicated and the problems related thereto intensified. They are: (1) program controls, and (2) the determination or identification of public funds received or expended by another State agency which clearly may be used as State funds for Federal matching purposes.

While we are tremendously interested in the total special education -- vocational rehabilitation program, I will attempt to treat here with only the vocational rehabilitation phase as it relates to controls and use of funds under the approved Federal-State plan. Perhaps this approach will provide, at least in part, the information you desire.

As you know there can be no Federal financial participation (Sections 2 and 3) in vocational rehabilitation activities which are not authorized by law and the approved State Plan. The Texas Agreement of Cooperation and the detailed Plan,[1] which is an integral part of the Agreement of Cooperation, are a part of the Texas Federal-State Vocational Rehabilitation Plan.

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[1] I presume you have a copy of these documents.

Before treating specifically with the Texas Plan and the questions you raised, perhaps it would be well to call attention to a few basic provisions which pertain to controls and use of Federal funds.

1. Responsibility for administration. (Section 401.3(d), Federal Regulations)

   ".....all decisions affecting the eligibility of clients, or the nature and scope of VR services to be provided, will be made by the State agency..... and that this responsibility will not be delegated to any other agency or individual."

2. State vocational rehabilitation funds. (Section 401.49, Federal Regulations)

   Public funds (from any source) may be considered as State vocational rehabilitation funds provided the funds are expended at the sole discretion of the State vocational rehabilitation agency for purposes which it designates. The State agency must be the final authority in the State for determining the kinds of expenditures to be made and what expenditures are necessary. The expenditures also must be made for purposes clearly identified with the vocational rehabilitation program. Funds do not have to be made available directly if their use, or the use of items paid for by the funds, is placed at the disposal of and control of the vocational rehabilitation agency in such a way as to be consistent with the sole State agency principle.

3. Personnel.

   When expenditures are made by another State agency for salaries of personnel engaged in vocational rehabilitation work the following applies:

   (a) Personnel are subject to the same or equivalent qualification standards and tenure standards applicable to all employees of the vocational agency.

   (b) Personnel selection is subject to approval of the vocational rehabilitation agency.

   (c) Separation of personnel by cooperating agency is subject to approval of vocational rehabilitation agency.

   (d) When engaged in vocational rehabilitation work, personnel shall be under the supervision and direction of the vocational rehabilitation agency and no other agency.

4. General

   (a) There should be State legal authority and clearance.

   (b) The vocational rehabilitation agency should have control over day-to-day operation.

   (c) The services must be vocational rehabilitation services authorized under the State Plan.

(d) The services are restricted to vocational rehabilitation clients.

(e) There should be no duplication of services, i.e., vocational rehabilitation cannot assume responsibility for providing services if the client is entitled to the same under the program of the agency furnishing the funds.

Mr. /The Regional Representative/ is thoroughly familiar with and can give you an interpretation in depth on requirements relating to controls and Federal financial participation.

A look at the Texas Special Education-Vocational Rehabilitation Plan in light of the above we find:

1. Financial provisions

(a) "The Texas Education Agency on approval of the State Directors of Special Education and Vocational Rehabilitation, will allot to the applicant school district, in accordance with provisions of the Foundation School Program Act, funds for the payment of salaries of the vocational adjustment coordinator......These funds will not be actually transferred to the vocational rehabilitation division but sent directly to the independent school district......The expenditures from the allotment will be for the operation of that part of the program authorized under the vocational rehabilitation plan......They will constitute actual expenditures by, and at the discretion of, the State vocational rehabilitation division, and for purposes which the vocational rehabilitation division designates and under circumstances of which it is fully cognizant. (Page 15 and 16, Texas Plan, and Page 2, Agreement of Cooperation).

(b) Approval of all expenditures for client services by assigned vocational rehabilitation counselor (Page 11, Texas Plan).

(c) Approval of budget (Page 15, Texas Plan).

(d) Vocational rehabilitation division to authorize all vocational rehabilitation expenditures (Page 2, Agreement of Cooperation).

(e) Vocational rehabilitation to develop a budget for the operation of the unit (Page 3, Agreement of Cooperation).

2. How much control the vocational rehabilitation agency has over the vocational rehabilitation coordinator in the school district.

(a) The vocational adjustment coordinator will function as a regular rehabilitation staff member in rendering vocational rehabilitation services as distinguished from special education services. He is subject to the standards applicable to employees of the vocational rehabilitation division. If his services are unsatisfactory to the vocational rehabilitation division the independent school district will cease to participate in the special rehabilitation program (Page 8, Item 3.b., Texas Plan).

(b) Approval by the State vocational rehabilitation director of the vocational adjustment coordinator (Page 9, Item 3.b., Texas Plan).

(c) Personnel assigned to the rehabilitation aspects of the program work under the direct supervision of the vocational rehabilitation division and function as vocational rehabilitation staff (Page 9, Item 3.e., Texas Plan).

(d) Vocational rehabilitation supervises the coordinator's work with vocational rehabilitation clients (Page 11, Item i., Texas Plan).

(e) Vocational adjustment coordinator administers vocational rehabilitation functions under the direction of the vocational rehabilitation counselor assigned to the local school district (Page 11, Item 3.a., Texas Plan). (Reference is also made to Page 11, Items 3.d., and page 14, Items 4.b., Texas Plan).

3. How much control the rehabilitation division has over the training program in the schools.

The Texas Plan provides for two separate units:

(a) Special Education Unit

The independent school districts exercise full control over activities which are currently, traditionally and legally the function of special education. The financing of such activities is the responsibility of special education at no cost to vocational rehabilitation (Page 6, Item A.1., Texas Plan). Specific areas include social adjustment, health and safety habits, pre-vocational and family relations (Page 12, Texas Plan).

(b) Vocational Rehabilitation Unit

The vocational rehabilitation division exercises full control over activities which are currently, traditionally, and legally the functions of vocational rehabilitation. This includes determination of eligibility of all vocational rehabilitation clients, and determination of nature and scope of all vocational rehabilitation services to be provided rehabilitation clients. Specific areas are enumerated on Pages 12, 13, and 14, Texas Plan. Vocational rehabilitation approves all on the job training - at work stations either within or outside school (Page 10, Item 2.f., Texas Plan).

We feel the Texas Plan as related to vocational rehabilitation activities is consistent and in conformity with Federal law and regulations. As in regular vocational rehabilitation program operations, it is essential that audits and program reviews be made from time to time in order to ascertain if operations are within authorized limits as well as to evaluate program adequacy.

In our opinion the plan is sound. It is an approach whereby needed services can be provided to a relatively large number of disabled youth economically and effectively. Other States in our region are adopting the plan with modifications which are necessary to meet local conditions and circumstances.

I hope the next time you are in this area you can favor us with a visit to our Regional Office.

Sincerely yours,

Regional Representative